



Civil Justice Should Not Be Ignored in Overhaul

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It wouldn't be a new Congress if we didn't hear the usual calls for an overhaul of the civil justice system. For federal legislation to sweep across all 50 states and considerably constrict a victim's right to compensation when injured while at the same time passing along massive handouts to insurance companies, corporate interests and

large pharmaceutical companies.

This Congress, I expect the majority to again ram through various types of bills restructuring the right of injured victims to obtain fair compensation, including limiting medical malpractice, class actions and asbestos — as well as changes to the federal rules of civil procedure and other smaller measures.

The majority's medical malpractice bill would supersede the law in all 50 states to cap noneconomic damages, cap and limit punitive damages, cap attorneys' fees for poor victims, shorten the statute of limitations, eliminate joint-and-several liability and eliminate collateral source.

The most obvious problem with the Republican proposal is that it does not solve the problem it purports to address. Study after study has shown that Draconian caps on damages do not reduce insurance premiums. In a comparison of states that enacted severe tort restrictions in the mid-1980s and those that resisted enacting any tort reform, no correlation was found between tort reform and insurance rates. In fact, a recent Government Accountability Office report found that there is no correlation between losses paid by medical malpractice insurers and limitations on noneconomic damages. For example, Minnesota, which had no caps on noneconomic damages, had the smallest increase in losses paid by insurers during the period covered.

So why are medical malpractice premiums rising? The real culprit is the insurance industry. You don't have to be an economics major to understand that insurers make their money from investment income, which is plummeting right now. During years of high stock market returns and interest rates, malpractice premiums go down. When investment income decreases — and we are still recovering from a lengthy bear market — the industry responds by sharply increasing premiums and reducing coverage, creating a liability insurance crisis. This boom-bust cycle took place in the 1970s and '80s, and it's happening again now.

The reality is that nearly 100,000 people die in this country each year from medical malpractice, and 5 percent of all health care professionals are responsible for 54 percent of all malpractice claims paid. The last thing we need to do is exacerbate this problem, while ignoring the true causes of the medical malpractice crisis in America. Yet that is precisely what the bill before us does.

Another purported solution to the problem touted by the administration is to shield prescription drug manufacturers from liability, even if the drug caused death or serious debilitating injury. This is especially troubling in light of the recent recalls of Celebrex and Vioxx, products that were deemed unsafe after having gained approval from the Food and Drug Administration. If the

majority's medical malpractice legislation were in effect, victims would be powerless to sue these drug companies for the injuries the drugs caused. There is no justification for such a solution — unless of course you want to work in a large handout to large prescription drug companies that heavily contribute to the Republican Party.

Other civil justice legislation we'll be forced to consider this year deal with class actions and asbestos. With the class-action bill, Republicans want to make it harder for class-action lawsuits against large companies to proceed by sending many state-filed cases to federal courts, which already are overburdened by heavy workload. The end result is that it will be far more burdensome, expensive and time-consuming for groups of injured persons to obtain access to justice. The bill also would apply to pending cases — and thereby work to the benefit of corporate criminals and scam artists, like Enron, Adelphia and Tyco — by throwing pending lawsuits brought by defrauded investors out of state court. The class-action legislation will remove the incentive for businesses to weigh consumer safety and protection concerns before making their bottom line decisions.

Finally, Congress may try to tackle the issue of asbestos lawsuits. Instead of providing for a fair, just and reasonable compensation system, the proposals circulated by the administration and Republicans will simply attempt to bail out corporations that have been found liable in asbestos litigation by excluding thousands of injured victims from eligibility for compensation and by delaying monetary payouts to those who will remain eligible for compensation.

I wish I could say this year will be different. I wish I could say this year Congress will focus on meaningful reform rather than trying to find ways to give large handouts to big businesses and pharmaceutical companies. If the past is prologue, that will not prove to be the case again.

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